

Appl. No. 10/791,855
Reply to FINAL Office Action of July 22, 2005
Amendt. dated September 28, 2005
Atty. Docket No. AP973US

REMARKS/ARGUMENTS

The undersigned thanks the examiner for the courtesy of a telephone interview on September 22, 2005 during which the rejection under 35. U.S.C. 112 was discussed and resolved.

Claims 1 - 30 are pending in the application.

Claims 1 - 13 and 15 - 30 have been allowed.

Claim 14 has been rejected under 35 U.S.C. 112, second paragraph, as indefinite.

In paragraph 2 of the office action, the examiner alleged that the term "of the same order" could mean that (i) the width and thickness were the same, (ii) the width and thickness were both in millimeters, microns, etc., or (iii) the width and thickness are approximately the same or very close. With respect, a person of ordinary skill in this art would have no problem determining what the phrase "width and thickness of the same order" meant, especially since the present specification directed the reader to the applicant's published PCT application for more information. It is noted that the examiner dismissed this reference to PCT application number PCT/CA 02/00971 because it was not incorporated by reference. Such dismissal is without merit because the reference to PCT/CA 02/00971 on page 17 of the specification was a specific instruction to the skilled addressee that "In order to achieve polarisation insensitive detection, the plasmon-polariton waveguide disclosed in International patent application No. PCT/CA 02/00971, i.e., with width and thickness of the same order, could be used as the strip 100." Hence, the skilled addressee was directed to document for specific information and incorporation by reference was unnecessary.

Notwithstanding the foregoing, it is submitted that the skilled address would not need to refer to PCT/CA 02/00971 for the meaning of the term "width and thickness of the same order" because the term is commonly used in the fields of science and technology. The skilled addressee would understand that "dimensions of the same order" means that the dimensions are of the same order of *magnitude*. The term "Order of magnitude" is well-known and commonly used to mean that two numbers are within a factor of about 10 from each other. Wikipedia, the on-line encyclopaedia at URL <http://en.wikipedia.org/wiki/Order-of-magnitude> (print attached) gives a more formal definition and states "If two numbers differ by one order, one is about ten times larger than the other" and "Two numbers of the same order of magnitude have roughly the same scale; the larger value is less than ten times the smaller value".

It is noted that the specification used the shortened form of the expression, i.e., without the words "of magnitude". Although "magnitude" was implicit because the reference was to the width and thickness of the strip, in view of the examiner's objection, the foregoing amendments add the words "of magnitude" to claim 14 and the corresponding reference to "same order" in the specification and abstract.

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In view of the foregoing, it is submitted that claim 14 is not indefinite and that all claims of record are patentable. Accordingly, early and favourable reconsideration of the application is respectfully requested.

Respectfully submitted,



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